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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,456	01/14/2004	Daniel B. Ballou	CUS-063	5633

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BOSTON, MA 02109

EXAMINER

SAETHER, FLEMMING

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,456

Applicant(s)

BALLOU ET AL

Examiner

Flemming Saether

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 14-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 26-35 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Election Restriction

Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-13 and 26-35, drawn to a drive anchor system, classified in class 411.
- II. Claims 14-25, drawn to a method of installing an anchor, classified in class 29.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case that article does not require the member to enable the mounting since it would be capable of mounting without the member.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Art Unit: 3677

During a telephone conversation with Mr. Detweiler on 3-15-05 a provisional election was made with traverse to prosecute the invention of group I, claims 1-13 and 26-35. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-10, 12, 13, 26, 27 and 29-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner (US 1,855,329). Wagner discloses a drive anchor system comprising a drive anchor (42) formed as a hollow shaft with a surface feature (not labeled) for providing anchoring and bifurcating crevice (43) creating first and second legs and, a member coupling (39) to fit within the drive anchor to expand the legs (see Fig. 1) which is also hollow to removably receive the shaft of a member (27). The external wall of the drive anchor further is disclosed to have a taper (see Figs. 4 and 6-8), a centering ridge (the uppermost ridge 50), a circular cross section, the surface feature formed as a protruding ridge (50) and, the surface feature extends along a substantial portion of the anchor (Figs. 1 and 6-8).

Claims 1, 3-13, 26 and 28-35, many alternatively, are rejected under 35 U.S.C. 102(b) as being anticipated by Bantle (US 6,406,235). Bantle discloses a drive anchor system comprising a drive anchor (20) formed as a hollow shaft with a surface feature (22) for providing anchoring and bifurcating crevice (34) creating first and second legs and, a member coupling (10) to fit within the drive anchor to expand the legs (see Fig. 5) which is also hollow to removably receive the shaft of a member (43). The external wall of the drive anchor further is disclosed to have a centering ridge (23), a circular cross section, the surface feature formed as a protruding ridge (22) and, the surface feature extends along a substantial portion of the anchor. Bantle further discloses the drive anchor and coupling member each provided with a flange (at 25 and 19 respectively).

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3677

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Flemming Saether
Primary Examiner
Art Unit 3677